

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EIG Energy Fund XIV, L.P.,
EIG Energy Fund XIV-A, L.P.,
EIG Energy Fund XIV-B, L.P.,
EIG Energy Fund XIV (Cayman), L.P.,
EIG Energy Fund XV, L.P.,
EIG Energy Fund XV-A, L.P.,
EIG Energy Fund XV-B, L.P., and
EIG Energy Fund XV (Cayman), L.P.

Plaintiffs,

-against-

Keppel Offshore & Marine Ltd.,

Defendant.

No. 18-CV-01047 (PGG)

ORAL ARGUMENT
REQUESTED

UNREDACTED VERSION

**DECLARATION OF DAVID KUMAGAI IN SUPPORT OF DEFENDANT KEPPEL
OFFSHORE & MARINE LTD.’S MOTION FOR SUMMARY JUDGMENT**

I, David Kumagai, declare as follows:

I am an attorney with the law firm Cravath, Swaine & Moore LLP, counsel for Defendant Keppel Offshore & Marine Ltd. (“Keppel”) in the above-captioned action. This Declaration accompanies the Memorandum of Law and Local Rule 56.1 Statement and Appendix in Support of Keppel’s Motion for Summary Judgment.

A. Court Filings

1. Attached hereto as Exhibit 1 is a true and correct copy of the First Amended Complaint, filed April 30, 2018 (Dkt. 17).

2. Attached hereto as Exhibit 2 is a true and correct copy of EIG’s Pre-Motion Letter, filed July 22, 2018 (Dkt. 82).

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3. Attached hereto as Exhibit 3 is a true and correct copy of the Deferred Prosecution Agreement in United States v. Keppel Offshore & Marine Ltd., Case No. 17-cr-697 in the United States District Court for the Eastern District of New York, dated December 22, 2017.

B. Discovery Responses

4. Attached hereto as Exhibit 4 is a true and correct copy of the Plaintiffs' Responses and Objections to Defendant's First Set of Requests for Admission, dated June 4, 2021.

5. Attached hereto as Exhibit 5 is a true and correct copy of the Responses and Objections of Defendant Keppel Offshore & Marine Ltd. to Plaintiff's First Set of Requests for Admission, dated June 4, 2021.

C. News Articles

6. Attached hereto as Exhibit 6 is a true and correct copy of the news article titled "Ex-Petrobras Executive Says Kickbacks Were Paid to Ruling Party's Officials", dated October 9, 2014, as retrieved on September 17, 2021 from the URL: <https://www.wsj.com/articles/ex-petrobras-executive-says-kickbacks-were-paid-to-ruling-partys-officials-1412893473>.

7. Attached hereto as Exhibit 7 is a true and correct copy of the news article titled "Operation Carwash in Brazil Causes Normally Staid Business Meeting to Go Off Script", dated November 17, 2014, as retrieved on September 17, 2021 from the URL: <https://www.washingtonpost.com/news/worldviews/wp/2014/11/17/operation-carwash-in-brazil-causes-normally-staid-business-meeting-to-go-off-script/>.

8. Attached hereto as Exhibit 8 is a true and correct copy of the news article titled "Petrobras's \$100 Million Man Tops Graft Haul in Scandal", dated December 2, 2014, as retrieved on September 17, 2021 from the URL:

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<https://www.bloomberg.com/news/articles/2014-12-03/petrobras-100-million-man-tops-graft-haul-in-scandal>.

D. Transcripts of Depositions Taken in this Action

9. Attached hereto as Exhibit 9 is a true and correct copy of the excerpted transcript of the deposition of Jeffrey Chow, dated June 24, 2021.

10. Attached hereto as Exhibit 10 is a true and correct copy of the excerpted transcript of the deposition of Kevin Corrigan and Rule 30(b)(6) deposition of EIG, dated July 20, 2021.

11. Attached hereto as Exhibit 11 is a true and correct copy of the excerpted transcript of the deposition of Simon Hayden, dated May 27, 2021.

12. Attached hereto as Exhibit 12 is a true and correct copy of the excerpted transcript of the deposition of Hoshrav Patel, dated May 14, 2021.

13. Attached hereto as Exhibit 13 is a true and correct copy of the excerpted transcript of the deposition of Tan Leong Peng and Rule 30(b)(6) deposition of Keppel, dated July 15, 2021.

14. Attached hereto as Exhibit 14 is a true and correct copy of the excerpted transcript of the deposition of Tan Leong Peng and Rule 30(b)(6) deposition of Keppel, dated July 16, 2021.

15. Attached hereto as Exhibit 15 is a true and correct copy of the excerpted transcript of the deposition of Blair Thomas and Rule 30(b)(6) deposition of EIG, dated July 30, 2021.

E. Transcripts of Depositions Taken in the Petrobras Action

16. Attached hereto as Exhibit 16 is a true and correct copy of the excerpted transcript of the deposition of Kevin Corrigan and Rule 30(b)(6) deposition of EIG, bearing Bates range EIG_KEP_00257407-787, dated October 16, 2020.

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17. Attached hereto as Exhibit 17 is a true and correct copy of the excerpted transcript of the deposition of Simon Hayden, bearing the Bates range EIG_KEP_00258738-9096, dated October 29, 2020.

18. Attached hereto as Exhibit 18 is a true and correct copy of the excerpted transcript of the deposition of Blair Thomas and Rule 30(b)(6) deposition of EIG, bearing the Bates range EIG_KEP_00262932-3229, dated December 16, 2020.

F. Deposition Exhibits

19. Attached hereto as Exhibit 19 is a true and correct copy of DX039, bearing Bates range EIG_KEP_00077790-832, which is titled “Energy Fund XIV Investment Recommendation”, dated June 27, 2011.

20. Attached hereto as Exhibit 20 is a true and correct copy of DX061 bearing Bates range EIG_KEP_00000130-141, which is titled “Pre-Salt Oil Rigs Project”, dated October 2010.

21. Attached hereto as Exhibit 21 is a true and correct copy of DX062, bearing Bates range EIG_KEP_00000001-091, which is titled “Private Placement Confidential Information Memorandum”, dated September 2011.

22. Attached hereto as Exhibit 22 is a true and correct copy of DX074, bearing Bates number EIG_KEP_00260322, which is titled “Minutes of TCW Energy Fund XIV”, dated June 27, 2011.

23. Attached hereto as Exhibit 23 is a true and correct copy of DX075, bearing Bates range EIG_KEP_00260390-432, which is titled “Energy Fund XV Investment Recommendation”, dated September 16, 2011.

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24. Attached hereto as Exhibit 24 is a true and correct copy of DX076, bearing Bates range EIG_KEP_00260323-326, which is titled “Minutes of Energy Fund XV”, dated September 16, 2011.

25. Attached hereto as Exhibit 25 is a true and correct copy of DX083, bearing Bates range EIG_KEP_00258521-539, which is titled “Brazil’s Energy and Infrastructure Landscape – A White Paper”, dated April 2014.

26. Attached hereto as Exhibit 26 is a true and correct copy of PX086, bearing Bates range EIG_KEP_00077755-756, which is an email chain, the top email in which is an email from Kevin Corrigan to Phil Abejar, dated June 29, 2011.

27. Attached hereto as Exhibit 27 is a true and correct copy of DX087, bearing Bates range EIG_KEP_00049151-161, which is titled “Second Round of Private Placements for the Sondas Project”, dated June 30, 2011.

28. Attached hereto as Exhibit 28 is a true and correct copy of DX089, bearing Bates range EIG_KEP_00048626-643, which is titled “First Amendment and Restatement Agreement”, dated September 8, 2011.

29. Attached hereto as Exhibit 29 is a true and correct copy of DX092, bearing Bates number BARRINGTON_ET_00000596, which is an email chain, the top email in which is an email from Kevin Corrigan to Barbara Olsen, dated July 27, 2011.

30. Attached hereto as Exhibit 30 is a true and correct copy of DX093, bearing Bates range BARRINGTON_ET_00000446-448, which is an email chain, the top email in which is an email from Kevin Corrigan to Barbara Olsen, dated August 1, 2011.

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31. Attached hereto as Exhibit 31 is a true and correct copy of DX095, bearing Bates range EIG_KEP_00121469-470, which is an email from Kevin Corrigan to Jeppe Starup, dated March 9, 2012.

32. Attached hereto as Exhibit 32 is a true and correct copy of DX109, bearing Bates range EIG_KEP_00263664-667, which is an email chain, the top email in which is a meeting invitation from Jose Magela Bernardes to Robert Vitale, dated November 18, 2014.

33. Attached hereto as Exhibit 33 is a true and correct copy of PX014, bearing Bates range KEPPEL00410554-594, which is an email chain, the top email in which is an email and attachment from Tommy Sam to Ting Yang Ang, *et al.*, dated October 30, 2011.

34. Attached hereto as Exhibit 34 is a true and correct copy of PX038, bearing Bates number KEPPEL00410559, which is a financial model attached to PX014 (Exhibit 33 to this Declaration).

35. Attached hereto as Exhibit 35 is a true and correct copy of PX018, bearing Bates range KEPPEL000422871-882, which is an email and attachments from Serene Lee to Abu Bakar, *et al.*, dated February 13, 2012.

36. Attached hereto as Exhibit 36 is a true and correct copy of PX025, bearing Bates range KEPPEL_00045251-294, which is an email and attachment from Nora Marsuki to Jeff Chow, dated August 7, 2012.

37. Attached hereto as Exhibit 37 is a true and correct copy of PX051, bearing Bates range KEPPEL00610466-558, which is titled "Engineering, Procurement and Construction Contract" between Frade Drilling B.V. and Fernvale PTE. Ltd., dated August 2, 2012.

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38. Attached hereto as Exhibit 38 is a true and correct copy of PX052, bearing Bates range KEPPEL00610372-464, which is titled “Engineering, Procurement and Construction Contract” between Bracuhy Drilling B.V. and Fernvale PTE. Ltd., dated August 2, 2012.

39. Attached hereto as Exhibit 39 is a true and correct copy of PX053, bearing Bates range KEPPEL00610654-746, which is titled Engineering, Procurement and Construction Contract” between Portugalo Drilling B.V. and Fernvale PTE Ltd.”, dated August 2, 2012.

40. Attached hereto as Exhibit 40 is a true and correct copy of PX054, bearing Bates range KEPPEL00555548-640, which is titled Engineering, Procurement and Construction Contract” between Mangaratiba Drilling B.V. and Fernvale PTE Ltd.”, dated August 2, 2012.

41. Attached hereto as Exhibit 41 is a true and correct copy of PX055, bearing Bates range KEPPEL00555263-355, which is titled Engineering, Procurement and Construction Contract” between Botinas Drilling B.V. and Fernvale PTE Ltd.”, dated August 2, 2012.

42. Attached hereto as Exhibit 42 is a true and correct copy of PX062, bearing Bates range KEPPEL00551033-034, which is an email from Eric Namtvedt to Aziz Merchant, *et al.*, dated March 21, 2011.

43. Attached hereto as Exhibit 43 is a true and correct copy of PX070, bearing Bates range KEPPEL000490690-768, which is titled “EPC Contract between URCA Drilling and Fernvale PTE Ltd.”, dated December 16, 2011.

44. Attached hereto as Exhibit 44 is a true and correct copy of PX086 and PX087, bearing Bates range KEPPEL00049887-924, which is an email chain that includes a certified translation, the top email in which is an email and attachment from Zwi Skornicki to Yew Yuen Chow, dated January 4, 2011.

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45. Attached hereto as Exhibit 45 is a true and correct copy of PX095, bearing Bates range KEPPEL00011126-128, which is an email chain that includes a certified translation, the top email in which is an email from Carla Shimabukuro to Kai Choong Kwok, dated November 8, 2011.

46. Attached hereto as Exhibit 46 is a true and correct copy of PX098, bearing Bates range KEPPEL00278825-827, which is an email and attachment from Monique Pereira, dated March 9, 2012.

G. Additional Litigation Documents

47. Attached hereto as Exhibit 47 is a true and correct copy of the document produced in this litigation, bearing Bates range BARRINGTON_ET_00000486-495, which is an email chain, the top email in which is an email from Gherardo Milanesi to Barbara Olsen, *et al.*, dated August 8, 2011.

48. Attached hereto as Exhibit 48 is a true and correct copy of the document produced in this litigation, bearing Bates range BARRINGTON_ET_00000651-654, which is an email chain, the top email in which is an email from Denise Fuzer to Barbara Olsen, dated August 23, 2011.

49. Attached hereto as Exhibit 49 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00000142-144, which is an email chain that include a certified translation, the top email in which is an email from Kevin Corrigan to Blair Thomas, dated October 5, 2011.

50. Attached hereto as Exhibit 50 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00000230-234, which is an email chain that

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includes a certified translation, the top email in which is an email from Kevin Corrigan to Blair Thomas, dated December 23, 2011.

51. Attached hereto as Exhibit 51 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00000128-129, which is a certified translation of an email from Joao Ferraz to Marcelo Hudik Furtado de Albuquerque, *et al.*, dated August 8, 2012.

52. Attached hereto as Exhibit 52 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00049095-9096, which is an email from Ivan Hong to Kevin Corrigan, *et al.*, dated August 3, 2011.

53. Attached hereto as Exhibit 53 is a true and correct copy of the document produced in this litigation, bearing Bates number EIG_KEP_00075177-213, which is a certified translation of an email from Denis Castro to Kevin Corrigan, dated September 27, 2010, and an attachment titled “Pre-Salt Oil Rigs Project”, dated October 2010.

54. Attached hereto as Exhibit 54 is a true and correct copy of the certified translation of the document produced in this litigation, bearing Bates range EIG_KEP_00095123-129, which is an email chain, the top email in which is an email from Tania Gobatti Calca to aires@bradescobbi.com.br, *et al.*, dated May 29, 2013.

55. Attached hereto as Exhibit 55 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00110494-535, which is a shareholders agreement titled, “Segundo Aditamento Ao Acordo De Investimento”, dated September 8, 2011.

56. Attached hereto as Exhibit 56 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00116690, which is an email chain, the top email in which is an email from Blair Thomas to Kevin Corrigan, dated July 30, 2012.

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57. Attached hereto as Exhibit 57 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00251502-508, which is an email chain, the top email in which is an email from Hoshnav Patel to Kevin Corrigan, *et al.*, dated March 28, 2012.

58. Attached hereto as Exhibit 58 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00251523-529, which is an email chain, the top email in which is from Hoshnav Patel to Simon Hayden, dated March 28, 2012.

59. Attached hereto as Exhibit 59 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00257850-852, which is an electronic calendar invitation and email chain, the top email in which is an email from Joao Ferraz to Fernanda Moraes Hope, dated October 5, 2010.

60. Attached hereto as Exhibit 60 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00257969-971, which is an email chain, the top email in which is an email from Luiz Reis to Kevin Corrigan, *et al.*, dated June 3, 2011.

61. Attached hereto as Exhibit 61 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00258104-106, which is an email chain, the top email in which is from Kevin Corrigan to Carla Vogel, *et al.*, dated June 23, 2011.

62. Attached hereto as Exhibit 62 is a true and correct copy of the document produced in this litigation, bearing Bates range EIG_KEP_00289876-962, which is titled "EIG Global Energy Partners, LLC Confidential Memorandum", dated October 2013.

63. Attached hereto as Exhibit 63 is a true and correct copy of the document produced in this litigation, bearing Bates range KEPPEL00005616-05617, which is an email broadcast from Keppel Group Corporate Communications, dated April 12, 2012.

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64. Attached hereto as Exhibit 64 is a true and correct copy of the document produced in this litigation, bearing Bates range KEPPEL00006070-072, which is an email chain, the top email in which is from Keith Teo to Chong Heong Tong, *et al.*, dated February 12, 2014.

65. Attached hereto as Exhibit 65 is a true and correct copy of the document produced in this litigation, bearing Bates range KEPPEL00076345-347, which is an email chain, the top email in which is an email from Zwi Skornicki to Kai Choong Kwok, *et al.*, dated March 16, 2012.

66. Attached hereto as Exhibit 66 is a true and correct copy of the document produced in this litigation, bearing Bates number KEPPEL00009237, which is an undated document titled “Good connections”.

67. Attached hereto as Exhibit 67 is a true and correct copy of the document produced in this litigation, bearing Bates range KEPPEL00009411-412, which is an email chain, the top email in which is an email from Bruno NG Wei Ming to Kai Choong Kwok, *et al.*, dated December 4, 2012.

68. Attached hereto as Exhibit 68 is a true and correct copy of the document produced in this litigation, bearing Bates range KEPPEL00010460-462, which is an email chain, the top email in which is an email from TT Low to Jerald Lee Quan Ti, *et al.*, dated August 3, 2011.

69. Attached hereto as Exhibit 69 is a true and correct copy of the certified translation of the document produced in this litigation, bearing Bates range KEPPEL00020438-440, which is an email from Guia Oil & Gas to Tommy Sam, dated August 16, 2011.

70. Attached hereto as Exhibit 70 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00330052-054, which is an email chain, the

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top email in which is an email from Yves Rodrigues Borges to Yan Naing Myint, dated September 23, 2014.

71. Attached hereto as Exhibit 71 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00040804-862, which is an email and attachments from Stephen Pan to Chiau Beng Choo, *et al.*, dated September 27, 2011.

72. Attached hereto as Exhibit 72 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00045267-288, which is titled “Marketing Consulting and Services Agreement”, dated December 1, 2011.

73. Attached hereto as Exhibit 73 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00049993-994, which is an email from Eric Phua to Yew Yuen Chow, *et al.*, dated February 13, 2012.

74. Attached hereto as Exhibit 74 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00429725-729, which is an email chain, the top email in which is an email from Chiau Beng Choo to Eva Ho, *et al.*, dated August 8, 2012.

75. Attached hereto as Exhibit 75 is a true and correct copy of the document produced in this litigation, bearing the Bates range KEPPEL00444138-140, which is a media release titled “Keppel signs contracts with Sete Brasil for five DSSTM 38E semis for US\$4.1 billion”.

Executed: September 20, 2021

New York, New York



David Kumagai